



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The
American Historical Review

WAS THERE A "COMMON COUNCIL" BEFORE
PARLIAMENT?

IT has been more or less generally supposed that the assembly which came to be called Parliament was at some earlier time called the "Common Council"—that would be some time between the Conquest and, say, the middle of the thirteenth century, when Parliament was rapidly becoming the usual name. No doubt most who have been teaching the history of this period with any care or engaged in research upon it have become suspicious of this term and disinclined to use it. But there it stands in most of the best books to trouble us with doubts. It is not a harmless term. It may play a trick upon any unwary reader and even the cautious writer may corrupt himself with his own phrases. To English minds "Common Council" (as it is often translated and capitalized) is bound to suggest things national or representative or related to the middle classes, or all of these. If there is no ground in the phraseology of the time for such suggestion we should know it.¹ Not enough study has been given to matters of language in connection with the origin of Parliament; words and phrases have been taken for granted and traditions respecting these have been passed on from generation to generation of students, and no one has stopped to put them to the test of the sources and find out securely what they originally meant. In this time of gleaning after the great workers and the great discoveries in English constitutional history it has seemed worth while to devote one bit of investigation directly to this phrase.²

¹ It is not in the least the object of the present paper to discuss whether or not the central assembly might have been appropriately called a common council at that time—if indeed there is anything to discuss along this line. The concern here is to know whether it was so called.

² When this investigation was nearly completed, my attention was called by Professor G. B. Adams to a statement by Mr. Robert Steele in *A Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns* (*Bibliotheca Lin-*

For it has been just these great workers who have continued the tradition respecting the "common council" and given that tradition authority. The Lords' Committees who drew up the *Reports on the Dignity of a Peer*, Thomas Duffus Hardy, Hallam, Stubbs, Pike, Bémont, Maitland, Liebermann, are examples; and the text-books of Taswell-Langmead and Medley. It is not necessary to extend the list or cite instances; all students of English history know the fact. And the myth is not dying out. Some very recent works even emphasize the phrase in this sense. Pasquet not only uses it frequently but takes pains to state that *magnum concilium* and *commune concilium* (spelling the latter word with a *c*) superseded *curia* and *concilium*.³ And Dr. McKechnie, in the second edition no less than in the first edition of his great work on Magna Carta, makes it his regular appellation for the larger central assembly. Some of his pages bristle with it, and he states in several places that this was the assembly which became Parliament. Thus, when speaking of the omission of the twelfth and fourteenth articles in the 1217 edition of Magna Carta, he says: "All mention of the *Commune Concilium*—that predecessor of the modern Parliament, that germ of all that has made England famous in the realm of constitutional

desiana, vol. V.), I. li-lii. "A phrase familiar to modern students is liable to much misconception—the 'commune concilium [*sic*] regni'. It is important in such matters to adhere to the language of authentic records, which have, at any rate until their forms have become mere conventions, a real meaning. The difference between 'concilium' and 'consilium' does not exist in our records until comparatively late, and the term 'commune consilium regni', while it is often applied to the advice offered by a meeting, large or small, of magnates, unquestionably on some occasions means nothing more than what we should call public opinion. No assembly calling itself or called 'commune concilium regni' has left any trace upon the records, though many have given the 'commune consilium regni' to the King who summoned them. The former use of the term seems entirely due to the mistakes of the Stuart parliamentary antiquarians." While I can not at all agree with Mr. Steele about the lack of an early distinction between *concilium* and *consilium*, he has surely stated an important truth about *commune consilium* (though showing an unnecessary anxiety to connect *regni* with the phrase). But he could not in this place offer any proof of his statement, even supposing it had ever been a matter of enough interest with him to make the necessary collection of references. For that reason or because of its rather obscure and incidental appearance, it has passed unnoticed, at least unheeded. It is perhaps fair to add that I had adopted the large and small assembly sources of *commune consilium* and the "public opinion" idea and phrase as part of my classification and had so used them in a paper read publicly on the subject before I knew of Mr. Steele's statement. His suggestion that the "common council" tradition goes back for its source to the Stuart parliamentary antiquarians is interesting. I have made no attempt to trace it back of the nineteenth century.

³ D. Pasquet, *Essai sur les Origines de la Chambre des Communes* (Paris, 1914), p. 3.

laws and liberties—disappears.”⁴ Sometimes, as here, he adopts the name untranslated, always, however, taking the liberty to change *s* to *c* in the second word; sometimes he calls it the “Common Council”; and he summarizes his notions of the term by saying that “The same Latin words which signify joint ‘consent’ or counsel thus came to signify also . . . that ‘Common Council’ afterwards of such vital constitutional importance, continuing under a new name the old *curia regis* . . . and passing in turn into the modern Parliament.”⁵

In the course of the investigation the results of which are here submitted, much of the matter in print which was written in England between the Conquest and the middle of the thirteenth century has been examined.⁶ No claim of exhaustive search is made, yet it is believed that the process has been carried far enough so that any new instances found will not be likely to upset the conclusions, supposing these to have been correctly drawn from the evidence already in hand.⁷ Two hundred and fifty-eight independent⁸ instances of the use of *commune consilium* have been found in this period, and these have been transcribed with accompanying text. Besides these

⁴ W. S. McKechnie, *Magna Carta* (Glasgow, 1914), p. 149.

⁵ *Ibid.*, p. 249. The term *curia regis* is another about which much has been assumed and a good deal of myth and tradition gathered. It also should be studied.

⁶ Yet it would have been hard and in some cases inadvisable to hold strictly to these boundaries, and it will be observed that they have sometimes been passed rather freely both as to time and place. While it is hoped that a fair degree of care has been used in going through the material, there can be no doubt that some instances have escaped notice. Besides the material indicated in the references, the following have been examined without revealing any instances of the phrase in question. Hence the references and this list (under the time-limits indicated) constitute the bibliography of this paper: William of Malmesbury; *Gesta Herwardi*; Eadmer, *Life of Anselm* and *Miracles of Anselm*; William of Poitiers; *Brevis Relatio*; Guy of Amiens; William of Jumièges; Simeon of Durham; John of Hexham; Aelred of Rievaulx; *Ann. S. Edmundi*; Henry of Huntingdon; Gervase of Canterbury; Robert de Monte; Richard of Devizes; Etienne de Rouen; Champollion-Figeac, *Lettres de Rois, Reines, et Autres Personnages des Cours de France et d'Angleterre*. Various other sources, promising little of value for the present purpose, such as Domesday Book, Pipe Rolls, *Publications* of the Selden Society, etc., have been more or less fully examined—some of them very carefully.

⁷ The writer is wholly aware, however, that whatever value this paper has lies, not in the conclusions, but in assembling the references and drawing the attention of specialists in this field to an undoubtedly questionable tradition.

⁸ Cases in which one chronicler copies the identical language of another are, of course, counted but once. But there are not a few in which, while there has been evident borrowing of ideas or fact, the form of statement was independent, and these are properly independent instances for the present purpose.

there have been collected, out of numberless examples, some two hundred cases of words or phrases similar to or in some way illustrating the phrase under discussion, such as "common assent", "common consent", "common choice", "common discussion", "common sentence" or "judgment", "common decree", "common consideration", "common estimate", and the like. These latter cannot, of course, be examined within the limits and purposes of this paper. And yet they constitute a fashion or trick of phraseology of the time which helps one to sense the contemporary force and meaning of the phrase in question. Some of them come very close to frequent meanings of "common counsel", and often there are combinations of the phrases (illustrations of this may be found among those given below), made apparently in order to bring clearness or emphasis. *Commune consilium*, in its standard uses, clearly belongs to a large family of serviceable phrases.

Several different shades of meaning and usage of *commune consilium* begin to stand out before the work of collection has gone far, and a possible classification suggests itself when a large number of contexts is studied together. A five-fold classification has appeared convenient for presentation here. Others might serve as well, and, under any scheme, some of the cases would be very hard to classify; no two people would do it in the same way. One point—the spelling of the second word—applies equally to all these uses, and should be mentioned before they are taken up individually. Writers have felt free to change *commune consilium* to *commune concilium* (also to capitalize the words either untranslated or translated); the latter form looks better in connection with their interpretation of it as an assembly name, and they have taken this liberty evidently upon the assumption that *consilium* and *concilium* were interchangeable in the Latin of the time. This brings up a rather important linguistic point which cannot be dealt with here. Suffice it to say that after noting thousands of instances—too many to make it ever feasible to prove the point by a list of references—the writer is convinced that there was at least as much distinction between these words in the writings in England during the two centuries following the Conquest as there was in classical Latin. *Concilium* was always the name of an assembly; *consilium* regularly meant counsel; exceptionally it denoted an assembly.⁹ But, leaving this assertion un-

⁹ It is my belief, however, that from early in the thirteenth century *consilium*, while retaining its standard meaning of advice or counsel, came also to be the regular name of the king's smaller, perpetual council, that which later became the Privy Council. See *American Historical Review*, XIX. 740-741, 868; XX. 330-333. I intend at some time to furnish further evidence of this.

proved, it is necessary and significant to notice here that in the two hundred and fifty-eight cases of *commune consilium* now to be considered the spelling is uniform—always *commune consilium*, never *commune concilium*.

Undoubtedly the most common sense of *commune consilium* is that in which it approaches our phrase "public opinion", or general understanding, consent, or consultation, obtained in no definite or formal way. Often it is understood from the context that certain individuals, groups, or parties are referred to—as the general opinion or consent of a crusading group; indeed it is very often used in connection with a fighting group or expedition of some sort, also of groups of messengers or ambassadors. Sometimes, however, it is impossible to tell from whom it is supposed to come. Of course in some of these cases the common advice may have been obtained possibly in formal meetings of the groups; but no hint of this is in the text, and the writer in his choice of language appears to have been uninfluenced by such association of ideas. This use is stable. Instances have been found pretty evenly distributed through material written all the way from the late eleventh century to the twelve-fifties, where the search ends. Ninety-two are listed here¹⁰ (including the illustrations which follow).

In the few illustrations that there is space to give of this or other uses, it is impossible to convey the full or correct impression,

¹⁰ Something of the distribution is shown here and in the other classes of cases by grouping the references into three periods, 1066–1154, 1154–1216, 1216–1250 (or later); and within the groups the references are arranged chronologically as far as can be readily determined.

1066–1154: Matthew Paris, II. 55; Ordericus Vitalis (in Migne, *Patrologia*, CLXXXVIII. 678, 686, 710); Matth. Paris, II. 85, 118; Eadmer, *Historia Novorum*, p. 287; Ord. Vit., pp. 497, 944; Florence of Worcester, *Chronicon*, II. 115; *Gesta Stephani*, pp. 71, 81. 1154–1216: *Materials for the History of Thomas Becket*, III. 74, 91; V. 160, 304; Benedictus, I. 19; Walter of Coventry, I. 198; Diceto, I. 384, 387, 431; Bigelow, *Placita*, p. 235; Wendover, I. 156; Diceto, II. 63, 65; Matth. Paris, II. 341; Map, *De Nugis*, p. 30; *Itinerarium Peregrinorum*, II. 161, 165; Walter of Coventry, I. 393; *Itinerarium Peregrinorum*, III. 229; V. 315; VI. 432; Benedictus, II. 110; Rigord, I. 111; Diceto, II. 103; Hoveden, III. 36; Giraldus Cambrensis, *Opera*, III. 212; IV. 400; Hoveden, IV. 19, 54, 67; Coventry, II. 134; Coggeshall, pp. 149, 150; *Rot. Litt. Claus.*, I. 132 (*bis*); *Rot. Litt. Pat.*, p. 133. 1216–1258: *Ann. Waverley*, p. 287; Coventry, II. 233; *Patent Rolls*, 1216–1225, pp. 22–23, 31, 54, 65, 141; *Letters of Henry III.*, I. 36, 73; *Rot. Litt. Claus.*, I. 475–476; *Ann. Dunst.*, p. 64; *Patent Rolls*, pp. 481–482; *Letters of Henry III.*, I. 232 (*ter*); *Patent Rolls*, pp. 497–498; *Ann. Dunst.*, p. 92; *Patent Rolls*, 1225–1232, pp. 25–26; Bracton, *Note Book*, II. 218; *Patent Rolls*, p. 397; Matth. Paris, III. 209 (*bis*); *Ann. Dunst.*, p. 142; Matth. Paris, III. 563–564; IV. 339, 341; *Ann. Burton*, pp. 258, 260; Newburgh, II. 522; *Letters of Henry III.*, II. 84; Matth. Paris, V. 360; *Ann. Burton*, p. 336; Matth. Paris, V. 519, 645; *Ann. Burton*, pp. 453, 465; Matth. Paris, V. 727.

as those who have ever done this kind of collecting will understand. A feeling of the inevitableness of certain conclusions grows only through intimate acquaintance with the long and monotonous list of contexts themselves. The very monotony tells its tale. On the first Crusade (1097): "Tandem innumeris hinc et inde interfectis, et maxime ex eis qui victualia quaerebant, deficientibus alimentis, dominus Boamundus et comes Flandrensis Robertus de communi consilio, ut pabula quaererent, exierunt."¹¹ A quarrel between the canons and citizens of Rouen (1192):

Eodem anno orta est gravis dissensio inter clericos, scilicet canonicos, Rothomagi et cives civitatis. Canonici namque murum novum fecerant circa coemeterium suum, et colligerant intus mercatores: et visum erat civibus quod hoc fiebat ad detrimentum civitatis: et petierunt ut canonici prosternerent opus illud, et nolebant. Unde factum est quod quadam die cives ex communi consilio irruerunt, et murum illum funditus subverterunt.¹²

Article 6 in the apocryphal "Willelmi Articuli Londoniis Retractati" (1210): "Statuimus [here follow regulations about watch and ward] prout vicecomites et aldermanni et prepositi et ceteri ballivi et ministri nostri melius per commune consilium ad utilitatem regni providebunt."¹³ A letter of Robert Fitz-Walter to William of Albini in which he seems to be speaking for the baron's forces (1215): "Et ideo per commune consilium prolongavimus torneamentum quod captum fuit apud Stanford".¹⁴ In the same conflict (1217): "Barones itaque cum, cimiteriis et ecclesiis omnibus more solito spoliatis per viam, ad castellum de Muntsorel pervenissent, et obsidionem dissolvissent, communi omnium consilio decretum est, ut versus Lincolniam properarent, ubi Gilebertus de Gant cum aliis baronibus supradictis diutina obsidionem egerant, sed inanem."¹⁵ From a letter of Richard of Cornwall giving an account of his crusade (1241): "Infra quem terminum apud Acon, vigilia Sancti Dionisii, ut vobis alias significavimus, applicantes, de communi consilio, praedicto Nazer mox misimus inquirendum, si treugam cum dicto rege factam nobis posset tenere."¹⁶ Agitation of the bishops against the archbishop's visitation (1250): "Et sigillis suis scripto communi appensis, bona fide ad invicem promiserunt, quod communi auxilio et consilio archiepiscopo resisterent."¹⁷

¹¹ Matth. Paris, II. 68.

¹² Benedictus, II. 250.

¹³ Felix Liebermann, *Die Gesetze der Angelsachsen*, p. 490.

¹⁴ Matth. Paris, II. 614.

¹⁵ *Ibid.*, III. 17.

¹⁶ *Ibid.*, IV. 140.

¹⁷ *Ann. Dunst.*, p. 181.

A second set of contexts is that in which the term denotes the mutual advice, consent, or opinion of relatively small groups—groups which seem not to have constituted a summoned assembly and yet about which there is some definiteness of specification. That is, there is a clearer indication whence the common counsel came than in the preceding class. Perhaps the commonest illustration of this use lies in the many papal letters scattered through the English material. The pope does things by the common counsel of the cardinals. And the English writers regularly use the same expression when they refer to the papal acts. But there are many other examples. This use, like the preceding, remains quite stable throughout—no significant increase or decrease. Eighty-one instances have been collected.¹⁸ The following may serve to illustrate. From a letter to Henry II. by his envoys sent to Rome on the Becket matter (1171):

Cum vero nos quatuor cum episcopis [two] quidem, qui plurimum exire [from Sienna] desiderabant, non potuissemus, in maxima animi angustia positi, ex communi consilio media nocte et latenter exivimus. . . . Sic a curia venientes sero redierunt [two of the envoys] ad dominum papam, ei de communi nostro consilio exponentes quod nobis fuerat a vestra majestate injunctum . . . quod ea die immutabiliter disposuerat dominus papa in vos nominatim, et in totam terram vestram cismarinam et transmarinam, de communi fratrum consilio, interdicti ferre sententiam, et eam quae in episcopos lata fuerat confirmare.¹⁹

A certain case is to be tried in the locality (1226): "Et mandatum est vicecomiti Devonie quod certis die et loco, quos ipse et Wil-

¹⁸ 1066–1154: Bigelow, *Placita*, p. 66; Matth. Paris, II. 68; Eadmer, p. 219. 1154–1216: *Materials for the History of Becket*, IV. 58; V. 491; VI. 421; VII. 62, 371, 484, 500; Matth. Paris, II. 282–283; Thomas of Monmouth, *St. William*, pp. 23, 47, 110, 186; Diceto, I. 346, 368–369, 381; Matth. Paris, II. 292; Benedictus, I. 202, 208; Diceto, I. 425; Matth. Paris, II. 316; Hoveden, II. 269; Benedictus, I. 293; Giraldus Cambrensis, *Opera*, VII. 201; Diceto, II. 39–40; Benedictus, II. 19, 57; *Itinerarium Peregrinorum*, I. 27, 33; Giraldus Cambrensis, *Opera*, V. 355; VI. 68; Diceto, II. 75; Benedictus, II. 216; *Placita*, pp. 262, 282; Giraldus Cambrensis, *Opera*, III. 282; Hoveden, III. 275; Walter of Coventry, II. 80; Matth. Paris, II. 411; Diceto, II. 127; Hoveden, III. 292; Diceto, II. 141; Walter of Coventry, II. 107, 125; *Rotuli Chart.*, pp. 38, 45–46 (*ter*—in five letters following this in the rolls there are fifteen uses of the term which are little more than formal repetitions in duplicate letters sent to other places); Coggeshall, p. 133; *Rot. Litt. Claus.*, I. 64; Matth. Paris, II. 496 (*bis*); Stubbs, *Select Charters* (ninth ed.), pp. 279–280; Matth. Paris, II. 619; *Rot. Litt. Claus.*, I. 184, 187, 188, 269; *Rot. Litt. Pat.*, p. 126; *Ann. Waverley*, p. 283. 1216–1255: *Rot. Litt. Pat.*, p. 190; *Letters of Henry III.*, I. 69; Bracton, *Note Book*, II. 139–140; *Rot. Litt. Claus.*, I. 532; Coventry, II. 274; *Close Rolls*, 1227–1231, p. 98; *Patent Rolls*, 1225–1232, p. 339, 362; *Letters of Henry III.*, II. 11; Matth. Paris, VI. 69, 144, 145; *Ann. Burton*, p. 339.

¹⁹ *Mat. for the Hist. of Becket*, VII. 471–473.

lelmus de Raleg et Hugo Peverel de communi consilio providebunt, convenient et diligenter et plene".²⁰ Certain men have been sent to Rome on the king's business, and now he is sending others to them with added instructions (1231): "Volumus etiam et mandamus quod in omnibus negociis nostris vobis et ipsis injunctis, ipsi vobis et vos eis fideliter assistatis, eadem vobis adinvicem communicantes, et de communi consilio inde disponentes."²¹ In a charter of the abbot of St. Albans (1258): "Deum habentes prae oculis, de communi fratrum nostrorum voluntate, consilio, et conniventia, subscriptas portiones duximus assignandas".²²

Thirdly, there have been collected fifty-three instances in which the common counsel came from a gathering apparently of considerable size and usually summoned for a definite purpose.²³ Here is a critical point in the investigation, for the summoned assembly whose common counsel is oftenest mentioned is just that great council—*concilium*, *magnum concilium*, *colloquium* it was surely called—soon to be called *parliamentum*. Was it called the "common council"? Was it in a fair way to be so called when "parliament" began to usurp the place of earlier names? The following cases seem typical of this third set of contexts, which it has seemed best to illustrate somewhat more fully. The distribution does not differ much from that of the preceding classes. From a speech of the archbishop in an ecclesiastical council of the province of Canterbury (1175): "Ideo in ecclesia Dei, secundum antiquam patrum consuetudinem concilia congregantur, ut ii qui constituti sunt in eminentiori cura pastoralis, vitam subditorum de communi consilio regularibus institutis informant, et enormitates quae pullulant incessanter consultiore censura compescant."²⁴ A central assembly

²⁰ *Patent Rolls*, 1225-1232, p. 73.

²¹ *Close Rolls*, 1227-1231, p. 582.

²² Matth. Paris, V. 669.

²³ 1066-1154: Eadmer, p. 55; *Select Charters*, p. 117; Eadmer, pp. 148, 239, 291; Florence of Worcester, II. 70, 100. 1154-1216: *Mat. for the Hist. of Becket*, IV. 321, 327; VII. 56-57; Hoveden, II. 190, 239; Benedictus, I. 311; *Itinerarium Peregrinorum*, IV. 283; Giraldus Cambrensis, *Opera*, IV. 430; Coggeshall, pp. 102, 123; *Rot. Litt. Pat.*, pp. 41, 52; Matth. Paris, II. 557; *Rot. Chart.*, p. 202. 1216-1259: *Patent Rolls*, 1216-1225, p. 125; *Letters of Henry III.*, I. 58; *Rot. Litt. Claus.*, I. 437; *Patent Rolls*, 1216-1225, p. 463; *Rot. Litt. Claus.*, II. 207; *Close Rolls*, 1227-1231, pp. 380-383 (the phrase is repeated in three duplicate letters following); *Patent Rolls*, 1225-1232, p. 463; Rymer, *Foedera*, I. 209; *Close Rolls*, 1231-1234, pp. 317, 318; *Letters of Henry III.*, I. 451; *Close Rolls*, 1234-1237, pp. 399, 501; *Ann. Dunst.*, pp. 168, 169; Matth. Paris, VI. 124-125; V. 81, 343, 732; Bracton, *De Legibus*, II. 44-45.

²⁴ Benedictus, I. 84.

arranges for an *iter* (1179): "Tunc rex congregatis episcopis et comitibus et proceribus regni apud Windesovers, communi eorum consilio,"²⁵ coram rege filio suo, divisit in quatuor partes Angliam; et unicuique parti praecepit viros sapientes de regno; et postea misit eos per partes regni eis assignatas, ut iustitiam exercerent in populo."²⁶ An episode of the year 1201:

Statim post Pascha praecepit rex, ut comites et barones Angliae essent apud Portesmue ad Pentecosten, parati equis et armis ad transfretandum cum illo. . . . Interim comites Angliae convenerunt ad colloquium inter eos habitum apud Leicestre, et ex communi consilio mandaverunt regi quod non transfretarent cum illo, nisi ille reddiderit eis iura sua.²⁷

From the writs announcing a tax (1207): "Sciatis quod per commune consilium et assensum concilii nostri apud Oxoniam, provisum est ad defensionem regni nostri et recuperationem juris nostri".²⁸ Wendover's summary of discussions at Rome between the ambassadors of Louis and the pope about the deposition of John (1216): "Item dicit Papa, quod de communi consilio generalis concilii [Fourth Lateran, 1215] excommunicaverat barones Angliae et omnes fautores eorum".²⁹ Beginning of a letter from King Henry to the Bishop of Durham (1225): "Rex Dunholm' Episcopo etc. salutem. Cum satis recolat discrecio vestra qualiter de communi consilio et spontanea voluntate Archiepiscoporum, Episcoporum, Comitum, et Baronum nostrorum quos generaliter ad presenciam nostram vocavimus concessa fuit nobis quintadecima rerum mobilium regni nostri".³⁰ From a similar letter (1233): "Rex abbati de Coggeshal' salutem. Satis vobis constat et bene recolitis qualiter de communi consilio et unanimi assensu omnium magnatum de regno nostro, tam episcoporum quam comitum, baronum, abbatum et priorum, concessum fuit nobis ab ipsis auxilium".³¹ Concerning the assembly at Merton which enacted the so-called statute of that name (1236):

Rex Archiepiscopis Episcopis Abbatibus Prioribus Comitibus Baronibus Militibus et omnibus libere tenentibus in Hibernia constitutis Salutem. Sciatis quod in presentia venerabilis patris E. Cant' Archiepiscopi Episcoporum Abbatum Comitum et Baronum de Regno *nostro*

²⁵ By a misprint this word appears *concilio* in the *Rolls Series* edition; but an examination of the manuscript has shown the regular spelling.

²⁶ *Ibid.*, I. 238.

²⁷ Hoveden, IV. 160-161.

²⁸ *Rot. Litt. Pat.*, I. 72.

²⁹ Matth. Paris, II. 662.

³⁰ *Rot. Litt. Claus.*, II. 75.

³¹ *Close Rolls*, 1231-1234, p. 311.

Anglie et de communi consilio eorundem magnatum nuper provisum fuit quod. . . .³²

From Matthew Paris's well-known account of the 1244 council which attempted to appoint ministers (throughout, it furnishes interesting illustrations of the meanings of *concilium* and *consilium*):

Et cum per commune consilium, a quo noluerunt recedere, provisum esset, ut responsio ad literas Papales pro rege deprecatorias prorogaretur usque ad terminum prænотatum, et recedentibus magnatibus, ultimo die concilii, quod sex diebus duraverat, usque ad noctem sollicitavit singulos praelatos, deprecans ut in crastino iterum convenirent. . . . [Grosseteste says:] Non dividamur a consilio communi. Quia scriptum est; Si dividamur, statim omnes moriemur. . . . Et murmurante et rege, solum est concilium. [Provisions of the council:] . . . de communi assensu quatuor eligantur potentes et nobiles de discretioribus totius regni, qui sint de consilio³³ domini regis . . .³⁴

From the record of the year 1247: "De parlamento habito Londoniis . . . Tandem de communi consilio provisum est, ut gravamina terrae domino Papae seriatim monstraturi ad curiam Romanam nuntii discreti destinarentur".³⁵ From a letter of Innocent IV., written in 1252, to the bishops of the province of Canterbury about the exemption of parish churches from procurations. They are to be thus exempt, he says, unless by chance (*nisi forte*) the metropolitan, or someone acting on his authority, should decide that the visitation ought to be made—"ad singulorum vestrum petitionem, vel de communi majoris partis concilii consilio et assensu".³⁶ Provisions made respecting suit in baronial courts, etc. (1259): "Convenientibus apud Westmonasterium in Quindena S. Michaelis ipso domino rege et magnatibus suis, de communi consilio et consensu dictorum regis et magnatum, factae sunt provisiones subscriptae."³⁷ If there is anything to be detected in these illustrations, or indeed in the preceding uses, of what Maitland called the "slow and subtle process of personification", it is the personification of an abstraction, such as the result, action, or spirit of a council rather than the council itself. Common action, common deliberation, common consent, common advice—all at one time or another expressed by *commune consilium*—constituted an increasingly popular notion or ideal which was

³² *Statutes of the Realm*, I. 4. The text as there printed indicates erasure of *nostro* in the manuscript.

³³ That is, of the king's small, continuous council.

³⁴ Matth. Paris, IV. 365-367, *passim*.

³⁵ *Ibid.*, IV. 594.

³⁶ *Ann. Burton*, p. 302. Probably the *concilium* indicates the synod of the province of Canterbury.

³⁷ *Letters of Henry III.*, II. 394.

being handed about in language. In fact, much might be said about the rise of the "common" or "community" idea in the middle of Henry III.'s reign.³⁸ During the twelve-forties especially, writings, both chronicle and official, were becoming suddenly filled with every possible use and combination of *communis* and *communitas*, and the ideas these words carried were ideas to conjure with in those days.³⁹

The next group of cases, the fourth, is little more than a variation of the preceding. It is where the term is followed by the word *regni* (sometimes alone, sometimes in combination with other words)—*commune consilium regni*. These have been separated (thirty-two are listed here)⁴⁰ because the phrase has become so well known through the famous articles XII. and XIV. of Magna Carta, and because writers have been especially inclined to see an assembly name in this combination; it is familiar to us as the "Common Council of the Realm". It is significant, however, that Maitland and McKechnie—both convinced that at some time the larger central assembly was called the Common Council or the Common Council of the Realm—nevertheless translate the two notable instances of the phrase in Magna Carta as "common counsel". When they studied a particular text with care the notion of an assembly-name

³⁸ One is tempted to speculate on whether or not common counsel were a kind of predecessor of the majority idea. To-day, when a group, committee, or assembly speaks in a formal way it usually means the majority. But the majority opinion may or may not be a *resultant*. Were those who had charge of assemblies in the thirteenth century trying to get the "sense of the meeting", as we sometimes say?

³⁹ No doubt here and in the other groups there is an occasional case, where the context is scanty, which anyone who was convinced in advance that there was a common council, and so called, would so interpret, and which might puzzle an unprejudiced reader who should study that isolated text. And, of course, the Latin of this time was no dead language, used with stereotyped precision; there were constantly varying shades of meaning and many individual vagaries. But to any one who has got the language-atmosphere of the time and who may venture to supply the unexpressed but determinative notions of the occasional scanty context, there can be no doubt about the *regular* meaning of this phrase, a rule proved by remarkably few exceptions. In view of this the burden of proof is always on the conciliatory idea in the doubtful cases.

⁴⁰ 1191-1215: Giraldus Cambrensis, *Opera*, V. 186; Hoveden, III. 155 (an examination of the manuscript has shown a printer's error in the *Rolls Series* text in making the second word *concilium*), 236-237; *Rot. Litt. Pat.*, p. 54; Liebermann, *Gesetze*, p. 490; *Select Charters*, pp. 288, 294, 295. 1216-1255: *Foedera*, I. 140; *Patent Rolls*, 1216-1225, pp. 54, 71; *Select Charters*, p. 344; *Rot. Litt. Claus.*, I. 336, 371, 349; *Patent Rolls*, 1216-1225, pp. 153, 177 (*bis*); Walter of Coventry, II. 252; Matth. Paris, III. 126; *Select Charters*, pp. 324-325; *Close Rolls*, 1231-1234, p. 551; Matth. Paris, III. 362; VI. 65, 66, 68; *Letters of Henry III.*, II. 37; *Reports on the Dignity of a Peer*, III. 9 (followed by two writs on the same subject containing the same words); Matth. Paris, V. 7; *Flores Historiarum*, II. 346; Matth. Paris, V. 494 (*bis*).

vanished. But the convincing procedure here, as in the other cases, is to bring the contexts together. Then it appears that *commune consilium* with the *regni* added is still a descriptive phrase for an abstract notion, appearing in various verbal settings and combinations. And it may be stated here that in the uses thus far considered (including the present) *commune consilium* has been found but once in the nominative—then the subject of an intransitive verb and obviously bearing the meaning of common plan or counsel.⁴¹ There have been 214 ablatives (121 after *de*, eighty-one without preposition, twelve after *ex*), forty accusatives (thirty-seven of them after *per*), and three genitives. Very little trace is to be found of what Liebermann has called “the operating subject of an action”. Just the phrase *commune consilium regni*, without further modifying words, has been found twelve times; eleven times, *commune consilium regni nostri* (all but two of these twenty-three after *per* or *de*—*per* appearing more frequently here); three times, *commune consilium totius regni*; and the following once each: *commune consilium totius regni nostri*, *commune consilium regni nostri Angliae*, *commune consilium totius regni nostri predicti*, *commune regni consilium et approbatio*, *commune regni convocati consilium et deliberatio*, *commune consilium domini legati et regni nostri*, *commune consilium omnium fidelium nostrorum regni nostri Angliae*. In one instance the phrase is paralleled with *communis assensus regni*. Indeed this latter may appear independently: action is taken *per communem assensum regni et civitatis* (London).⁴² An examination of these various phrases and contexts shows that *commune consilium* with the *regni* added was not becoming a name of the great council or of any other body. But it should be noticed that this use is not evenly distributed, like the preceding. Beginning just at the end of the twelfth century and growing rapidly in the early thirteenth, it signified something new in the content and manner of

⁴¹ It has just been discovered that the archbishop has escaped to the Continent (1164). The Northampton council is still in session. “Rex vero haec audiens, turbatus plurimum, convocatis pontificibus et proceribus sciscitatur quid agendum. Et commune quidem consilium erat, ut, quia majores episcoporum, juxta quod supra diximus, regi se obligaverant, Romanum adirent pontificem, de perturbatione regni et sacerdotii et reatu perjurii eum accusaturi, et interim omnia ejus in pace essent, donec quid Romanus pontifex judicaret, reportarent.” *Mat. for the Hist. of Becket*, IV. 327. It is, of course, not unusual to find such assembly names as *curia*, *concilium*, *colloquium*, and later *parliamentum* in the nominative.

⁴² From “a document of nine articles, which seem to be the heads of a petition prepared by the Londoners, probably in 1215, in which they ask *inter alia* the abolition of all tallages except” . . . (then the words in the text). *English Historical Review*, XVII. 726; McKechnie, *Magna Carta*, p. 236.

thought, just as all marked changes in phraseology do. Much has still to be learned from the language of the early thirteenth century of the growing idea, not only of the usefulness and propriety of common action, but of a speaking and acting nation—an idea which had little or no connection at the start, and perhaps for a long time, with the institutions and practices which finally resulted in concentration of popularly chosen representatives of county or borough.

The last group, consisting of seventeen cases, indicates an approach to an assembly-name. The notion of counsel or advice is more or less clearly present, but there is personification creeping in, and it lies in the direction of an assembly rather than of the product of an assembly. In all of these cases our phrase is followed by *nostrum*—*commune consilium nostrum*. In some of these instances the *nostrum* alone constitutes the hint of an assembly name; in others the context contains an added indication. They have all been found between 1215 and 1236, and all, of course, in the king's letters.⁴³ At this time the king's council was regularly referred to as *consilium* or *consilium nostrum*, probably more commonly the latter. The rolls abound with these terms, especially during that time of great conciliar activity, the minority of Henry III. Eleven of the seventeen cases of *commune consilium nostrum* are from the minority, the other six from 1215, 1231, 1234 (*ter*), and 1236. Two generalizations concerning them may be ventured: first, in most of them the personification is shadowy and incomplete, the notions of advice and of council are shading into each other; second, in all but one or two of them, what personification there is lies in the direction of the king's council, the smaller continuous body, rather than the larger summoned assembly. The kind of business transacted is one of the indications of this.⁴⁴ Not one of the phrases in this division

⁴³ Probably the unprinted rolls later in Henry III.'s reign would yield more of them, although rather curiously none has been found in the volume of printed *Close Rolls* for the years 1237–1242, and only one each in the volumes for 1231–1234 and 1234–1237.

⁴⁴ In this connection it may be appropriate to add that various French cities had governing bodies which were being called "common councils" at this same time. Six such instances have been found in Henry III.'s letters either to or from these cities: 1206, Rex etc. Majori et Juratis et communi consilio Burdegal' salutem (*Rot. Litt. Claus.*, I. 73); 1219, Rex majori et communi consilio Burdegaliae, salutem (*Foedera*, I. 230); 1219(?) . . . commune Vasacense consilium (*Letters of Henry III.*, I. 67); 1219, Illustrissimo, Dei gratia, Henrico . . . commune concilium [*sic*] Aquis (*ibid.*, p. 45); 1224, commune concilium [*sic*] Burdegaliae (*ibid.*, p. 231); 1243(?), . . . Henrico regi Angliae . . . commune consilium Aquis (*ibid.*, II. 33). And one instance has been noticed in which the French central assembly which corresponded to the English great council was (1185), in a French chronicle, called "common council". Rigord, II. 47.

must from the context mean the larger assembly, as is so often the case with *concilium*, *colloquium*, or later *parliamentum*. Sometimes, it is true, it is impossible to tell in the case of a single context which is meant; but taking all these contexts together it seems fairly clear that the ancestor of the Privy Council—ordinarily called *consilium* or *consilium nostrum* in the king's letters—was already in a fair way to acquire a name, "common council", which appears to have been one of the less common of its variant appellations in the fourteenth century. All this, however, can best be left to the reader's judgment of the illustrations; or indeed he would do well to examine carefully all of these seventeen cases.⁴⁵ A letter of 1215:

Rex venerabili patri in Christo S. Cant' Archiepiscopo etc. Paternitati vestre devote duximus supplicandum quatinus castrum Roff' quod in manu nostra existere debet usque ad Pascham proximum post generale concilium. . . . Cui volumus quod committatur custodiendum donec de communi consilio nostro provideatur cui committatur custodiendum usque ad prefatum terminum. . . .⁴⁶

The first of the cases in Henry's minority, 1217: "Rex dilecto et fidei suo, Falkesio de Brewte, salutem. Sciatis quod, per ordinationem domini legati et communis consilii nostri, commisimus dilectis nobis in Christo de Ely et de Bernewell prioribus, custodiam omnium maneriorum pertinencium ad episcopatum Eliensem".⁴⁷ To the mayor and good men of Bordeaux (1219): "Noveritis quod de communi consilio nostro mensurari fecimus dolia vinaria, quae mercatores villae vestrae Burdegalensis adduxerunt cum vinis in Angliam".⁴⁸ From 1220: "Scias quod concessimus Roberto filio Walteri quod quietus sit de carucagio assiso per commune consilium nostrum."⁴⁹ If this last be interpreted as an assembly name, it is of the larger assembly and seems an exception. The king has been stating why Geoffrey de Marsh should no longer be justiciar in Ireland (1221):

Unde merito ad hoc provocati ut ipsum terre nostre Hybern' decetero preesse non velimus; de communi consilio nostro et assensu magnatum et fidelium nostrorum Anglie statuimus et volumus quod venerabilis pater H. Dublin' Archiepiscopus terre illius custodiam habeat et curam sub nobis donec aliud inde statuimus.⁵⁰

⁴⁵ Séven illustrations are given here. The other ten instances are: *Patent Rolls*, 1216-1225, pp. 122, 154, 157; *Rot. Litt. Claus.*, I. 384, 507, 516; *Patent Rolls*, 1216-1225, p. 352; *Letters of Henry III.*, I. 432; *Close Rolls*, 1231-1234, p. 552; 1234-1237, p. 288.

⁴⁶ *Rot. Litt. Pat.*, p. 181.

⁴⁷ *Patent Rolls*, 1216-1225, p. 120.

⁴⁸ *Letters of Henry III.*, I. 37.

⁴⁹ *Rot. Litt. Claus.*, I. 442.

⁵⁰ *Ibid.*, I. 476.

Here is a clear indication of both the small and large councils, with *commune consilium* indicating the former. The next illustration is after the minority (1231), but the king was in France; earls, barons, knights, and others who were to hold a tournament at Alverton on a day named are ordered not to hold it there at that time: "Scituri pro certo quod in reditu suo ad regnum providebit rex de communi consilio suo et aliorum fidelium suorum ubi de licentia regis torneare possint."⁵¹ Here the one word *consilio* is made to do double service: first, in connection with *communi* and *suo*, it means the king's council, and second, understood with the phrase *aliorum fidelium suorum*, it means the counsel of the larger group. In 1234: "Rex dilecto et fideli suo Waltero de Clifford' salutem. Sciatis quod provisum est de communi consilio nostro quod omnia castra que fuerunt in manu Petri de Rivall'".⁵² In the letter directly preceding this on the roll, and on the same subject, the corresponding clause has the form *de consilio nostro*. It is believed that these citations show the degree and nature of the personification as far as that can be done here. Yet to one very familiar with these rolls there are possibilities for comparison and opportunities to get the scribe's language-sense which are really determinative in the conclusion. For example, it is noticeable that, although the *nostrum* seems to make this an assembly name, and usually of the smaller assembly, yet the *commune consilium nostrum* is never found following *coram* or the *teste* or in many other contexts of unmistakable personification which abound, especially in this part of the *Close Rolls*, in the case of the simple *consilium nostrum*. And in all the personifications of *consilium*, alone or with the other words, one never reads of its beginning or its being brought to an end, that this was the first day of, or the second day of, that it was summoned for a certain time, that it had been "held" or "celebrated"—the kind of indication found, so frequently in the chronicles, with *concilium*, *colloquium*, and finally with *parliamentum*. It is as if there were a root-idea of calling or gathering and then dispersing connected with these latter terms that is never found, unless by rarest exception, with *consilium* in any of its combinations.

Two anomalous and difficult cases remain to be considered. The first one is very familiar, and the uncritical way in which it has generally been read has undoubtedly contributed to the "common council" tradition. In William the Conqueror's ordinance separating the spiritual and temporal courts, he decrees that the church laws are to be better kept, and he does this, he says, *communi con-*

⁵¹ *Patent Rolls*, 1225-1232, p. 452.

⁵² *Close Rolls*, 1231-1234, p. 462.

cilio et consilio archiepiscoporum et episcoporum et abbatum et omnium principum regni. The trouble with this language is evident. If *commune concilium* means the great council, then the following words are superfluous and meaningless. In view of this Liebermann seems to hint that *commune concilium* refers to some ecclesiastical council.⁵³ The difficulty is probably solved, however, through Liebermann's other suggestion of comparing this language with the document of Edward II.'s reign, the *Gravamina Cleri*, which contains a paraphrase, in parts almost a transcript, of William's ordinance.⁵⁴ That it was written with a copy of the ordinance at hand is clear. Here it is stated that William made his decree *de communi consilio archiepiscoporum, episcoporum*, etc. This is a perfectly normal use of the term, and, according to the classification just used, would fall in the third group. The earliest manuscript of this ordinance now existing and the one containing the anomalous form is from the thirteenth century—ample time for the text to have become corrupt. The clergy, who in Edward II.'s reign were drawing up their *gravamina*, undoubtedly used an early and correct copy.⁵⁵

The other case is to be found in the rediscovered third original, known as the Hereford original, of Stephen's second charter. This document and the circumstances of its finding at Oxford about eight years ago have been recently described by Dr. R. L. Poole.⁵⁶ He points out the variations of this original from the Salisbury and Exeter originals from which our texts of that charter have always been printed. The most noticeable variation is the one which concerns us here. The other two originals end with the words: "Apud Oxeneforde, anno ab Incarnatione Domini MCXXXVI., sed regni mei primo"; the Hereford original ends: "Apud Oxeneforde, anno ab Incarnatione Domini MCXXXVI., in communi concilio". This surely looks like an assembly name; the preceding preposition *in* precludes any of the usual interpretations. The authenticity of the document being beyond question, it stands back there in 1136 an isolated usage in that period.⁵⁷

⁵³ Liebermann, *Gesetze*, I. 485.

⁵⁴ Wilkins, *Concilia*, II. 314.

⁵⁵ Is there not another evidence of this in the fact that the word *observatae* after *fuerunt* in the first sentence—necessary to the sense—is found only in the *gravamina* paraphrase?

⁵⁶ R. L. Poole, "The Publication of Great Charters by the English Kings", *Eng. Hist. Rev.*, XXVIII. 446-448.

⁵⁷ Speaking in general of this second charter of Stephen, Dr. Poole has remarked: "It is in fact a very peculiar document. It looks as though a scribe familiar with the style of French charters had attempted to produce a diploma in the Old English form." *Ibid.*, p. 447.

The conclusion from all this is so obvious that it needs barely to be stated. There is no evidence that *commune consilium* was or was becoming an assembly name in England except the slight approach along this line which has been noted with respect to the smaller council. If there were anything of this sort with respect to the great council, before the process was appreciably started *parliamentum* had arisen and occupied the ground.⁵⁸ And it must be remembered that during all the time under consideration there had been terms used obviously as names of what is usually, and quite correctly, called the "great council"—the ancestor of the House of Lords. The usual names were *concilium*, *magnum concilium*, and *colloquium*. The last term became popular toward the end of the twelfth century, but never displaced the other two. There were others, much less common, such as *curia*,⁵⁹ *conventus*, *congregatio*, *concilium generale*, *concilium universale*, etc. As has been shown elsewhere, *parliamentum* began to be used as a name for the larger central assembly as early as 1239.⁶⁰ It grew rapidly; it was used alternatively with the names just cited, and those were the names which it finally and directly displaced. There was no era of a "common council" in between.

ALBERT BEEBE WHITE.

⁵⁸ It might be urged, *a priori*, that just as *parliamentum* was for long rather the name of an act than a body and the personification was far from complete even in the fourteenth century, so *commune consilium* had had a somewhat similar history, only never reaching the final stage of development. But to this it must be replied that all the while *commune consilium* was a common phrase the old names for the central assembly continued, and obviously as names. But just as soon as *parliamentum* appeared in the field the old names began to diminish in frequency, and finally fell before it. Words like *tractatum*, *colloquium*, *parliamentum* might at any time begin to pass over from discussion to a discussing body, provided some such body were having a continuous and important history. But *consilium* would not be likely so to pass, at least with respect to the larger central assembly, for the place was supplied by the already existing *concilium*—much the same thing as saying that it was already there itself with but the change of a single letter. But the king's group of permanent counsellors was not called *concilium*, and it is the writer's belief that *consilium* did undergo personification with respect to this smaller body; as soon as the ancestor of the Privy Council was important or continuous enough to be called anything regularly, it was called *consilium*.

⁵⁹ In almost all the instances in which this word was applied to the great council, some judicial activity or function of that body seems to have been prominently in the writer's mind.

⁶⁰ *Modern Language Review*, IX. 92-93.